

## § 27.20

shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(f) When service of the Notice of Default and Foreclosure Sale is made by mail, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under § 27.10(b), has designated him or her to act as commissioner.

(g) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

### § 27.20 Conditions of foreclosure sale.

(a) The requirements of section 367(b)(2)(A) of the Act (12 U.S.C. 3706(b)(2)(A)) apply if a majority of the residential units in a property subject to foreclosure sale pursuant to the Act and this subpart are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner.

(b) Terms which the Secretary may find appropriate to require pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)), and such other provisions of law as may be applicable, may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)) shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example: If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b),

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any terms required by the Secretary pursuant to this section shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to this section if the foreclosure sale occurs more than five years after the completion of such rehabilitation work (signified by the due date for commencement of amortization payments in the section 312 loan note).

(d) The limitation contained in paragraph (c) of this section applies only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under this section and section 367(b) of the Act (12 U.S.C. 3706(b)) shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate covenants contained in the deed to be delivered by the foreclosure commissioner under § 27.45. Terms required by the Secretary pursuant to this section shall be stated or described in the Notice of Default and Foreclosure Sale under § 27.15.

(f) The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105.

[61 FR 48548, Sept. 13, 1996, as amended at 66 FR 35847, July 9, 2001]

#### § 27.25 Termination or adjournment of foreclosure sale.

(a) Before withdrawing the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in section 369B(c) of the Act (12 U.S.C. 3710(c)).

(b) The commissioner may not withdraw the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)) more than once unless the Secretary consents in writing to such withdrawal.

(c) The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

#### § 27.30 Conduct of the sale.

(a) The commissioner shall accept written one-price sealed bids from any party including the Secretary so long